U.S., under continuing contract(s) with American Manufacturing Company, Inc., of Tacoma, WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40077 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of exisiting motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and factilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(*l*). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 95540 (Sub-1038F) (M1F) (Notice of filing of petition to modify certificate) filed August 6, 1979. Petitioner: WATKINS MOTOR LINES, INC., 144 West Griffin Rd., Lakeland, FL 33801. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Petitioner hold a motor *common carrier* certificate in MC-95540 Sub 1038F, issued June 25, 1979, authorizing transportation, over irregular routes, transporting foodstuffs (except in bulk, in tank vehicles) in vehicles equipped with mechanical refrigeration, from points in CT, MA, NJ, NY, and PA, to points in AL, FL, MS, NC, SC, TN and VA. By the instant petition, petitioner seeks to modify the above certificate by removing the language "in vehicles equipped with mechanical refrigeration."

MC 144041 (M1F) (Notice of filing of petition to modify certificate) filed May 19, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds motor *common carrier* certificate in MC-144041 issued September 21, 1979, authorizing transportation, over irregular routes, transporting (1) *chemicals*, (except in bulk), from Decatur and Conyers, GA, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of Bio-Lab, Inc., at the named origins, and (2) *materials, equipment, and supplies* used in the manufacture, sale and distribution of chemicals (except in bulk), from points in the U.S. (except AK and HI) to Decatur and Conyers, GA, restricted to traffic destined to facilities of Bio-Lab, Inc., at the named destinations. By the instant petition, petitioner seeks to modify the above certificate be deleting the facility restrictions in (1) and (2) above.

MC 144041 (Sub-15F) (M1F) (Notice of filing of petition to modify certificate) filed May 6, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC-144041 Sub 15F, issued August 15, 1979, authorizing transportation, over irregular routes, transporting *plastic articles and materials* (except in bulk) between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Mobile Chemical Company, Plastics Division. By the instant petition, petitioner seeks to modify the above certificate by deleting the facility restriction.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40065 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of

Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed by February 9, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: December 16, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Board Member Taylor votes to deny the request for gateway elimination.)

MC 93682 (Sub-21F), filed October 1, 1980. (Supplemental Publication) (Previously published in the **Federal Register** on October 23, 1980). Applicant: COLES EXPRESS (Gateway Elimination), 444 Perry Road, Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams Street, P.O. Box 238, Milton, MA 02187. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities which because of size or weight require the use of special equipment, articles of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in RI within 10 miles of Providence, including Providence, on the one hand, and on the other, points in CT.

Notes.— (1) This proceeding is a matter directly related to a finance proceeding in MC-F-14477F, published in the **Federal Register** issue of October 23, 1980. (2) The purpose of this application is to eliminate gateways at MA points in order to provide the through service as stated above. (3) This supplemental decision-notice is the result of applicant's petition to reopen for the purpose of receiving additional evidence and for reconsideration of the prior publication. The original publication deleted the through service stated above because Coles sought to tack the authority being purchased in MC-F-14477F with authority pending in MC-93682 (Sub-No. 20F). That authority has now been certificated.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40078 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[No. 37427*]

Cortez Pipeline Company—Petition for Declaratory Order—Commission Jurisdiction Over Transportation of Carbon Dioxide by Pipeline

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Filing of Petitions.

SUMMARY: Petitioners question whether their proposed interstate pipeline transportation of carbon dioxide gas is subject to our jurisdiction under 49 U.S.C. 10501. We are instituting a proceeding to resolve the question. It is our tentative conclusion that we do not have jurisdiction.

DATE: Comments are due February 9, 1981.

ADDRESS: An original and 15 copies of comments should be sent to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Cortez Pipeline Company of Houston, TX, a pipeline common carrier filed a petition on April 21, 1980 in No. 37427,[1] seeking a declaratory order to determine if its proposed transportation of carbon dioxide in interstate commerce is excepted from the jurisdiction of the Interstate Commerce Commission under the provisions of 49 U.S.C. 10501(a)(1)(C):

" " " the Interstate Commerce Commission has jurisdiction over transportation " " " by pipeline " " " when transporting a commodity other than water, gas, or oil" " ".

Pipeline companies may construct or extend their facilities without a certificate or other evidence of franchise from us. See *Petroleum Products, Williams Bros. Pipeline Co.*, 351 I.C.C. 102, 107 (1975). Nevertheless, there is still a question here of whether the commodity involved in the proposal is excepted from our jurisdiction.

Petitioner will transport carbon dioxide for the Shell Oil Company over its proposed 480-mile pipeline from Colorado to Texas, crossing New Mexico. Approximately two-thirds of the pipeline will be constructed on Federal, State, and Indian lands, and petitioner must, accordingly, obtain right-of-way permits from the U.S. Interior Department's Bureau of Land Management or from the States involved. In addition, the U.S. Department of Transportation is exercising jurisdiction over the pipeline's compliance with safety standards. Carbon dioxide will be used to flood depleted oil fields and force to the surface an estimated 280-million barrels of otherwise unrecoverable crude oil.

Petitioner takes the position that carbon dioxide is covered by the present statutory exception from our regulation of "water, gas, or oil". It will be transported under sufficient pressure to put it in a "super-critical" state between a gas and a liquid, but at normal atmospheric pressure carbon dioxide is a gas. It contains only slight traces of methane hydrocarbon being 98 percent pure and is, therefore, noncombustible. According to petitioner, the 49 U.S.C. 10501(a)(1)(C) exclusion was broadened by the recodification of the Interstate Commerce Act to include noncombustible as well as combustible gas useable for fuel.

Petitioner has previously sought exemption from the jurisdiction of the Federal Energy Regulatory Commission (FERC),[2] which regulates the interstate transportation of natural gas pursuant to the Natural Gas Act of 1938,[3] on the ground that carbon dioxide is not a natural gas.

The FERC DECISION, IN DOCKET No. CP-130 (1979), does not rest on a construction of the term "natural gas," but rather proceeds primarily by reference to the goals and purposes of

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* Embraced in this decision is No. 37529, Arco Oil and Gas Company—Petition for Declaratory Order—Jurisdiction Over Interstate Pipeline Transportation of Carbon Dioxide. See Footnote 1.

[1] In No. 37529, Atlantic Richfield Company filed a petition on October 21, 1980 seeking a declaratory order for the same purpose. It also intends to transport carbon dioxide by pipeline from Colorado to West Texas for use as a tertiary method of recovering crude oil reserves (the primary method being oil flowing to the surface as a result of natural reservoir pressure; and the secondary method consisting of flooding the reservoir with water to force oil to the surface). This petition makes essentially the same argument, as does the first petitioner, in justification of an exception from our jurisdiction. Disposition of the lead petition will also govern disposition of the embraced petition.

[2] Successor to the Federal Power Commission.

[3] Pub. L. 75-687.

the Natural Gas Act. FERC concluded that because the goal of that Act was to protect consumers from exploitation at the hands of natural gas companies, jurisdiction over CO^2 *pipelines would advancxe no goal or purpose of the NGA.*

The former section 1(1)(b), originally part of the Hepburn Act of 1906,[4] provided that this Commission had jurisdiction over the interstate transportation of comodities (including oil) by pipeline, "except water and except natural or artificial gas". After the transfer of jurisdiction over oil to the Department of Energy in 1977,[5] the Interstate Commerce Act was recodified in 1978 [6] for revision and reorganization but not substantive change.[7] The recodification, as pertinent, reflected the transfer of jurisdiction over oil and, also, eliminated the "natural or artificial" description of gas because those words were considered surplus.[8]

Gas is found in the ground separately or with oil. All gas has certain common characteristics of lacking independent shape or volume and of expanding indefinitely, but a difference in the hydrocarbon content can result in gas being more or less combustible. In nature, combustible and noncombustible gas are often produced together,[9] and the carbon dioxide that petitioner proposes to transport comes from natural underground sources.[10] Even so, trade usage has generally treated combustible gas useable for fuel as natural gas.

Gas was first used as fuel for lighting purposes in the 1800's.[11] By the time of the Hepburn Act, natural gas was beginning to replace artificial gas for lighting and manufacturing. Congress was considering gas as a fuel when it excepted "natural or artificial gas", and the recovery of oil reserves by flooding with gas (including carbon dioxide) was not used extensively until a decade or so later.[12] The question is whether Congress intended to exclude from our jurisdiction all gas types regardless of origin or source. We believe it did.

The Congressional debates preceding the Hepburn Act involved, among other things, the question of whether artificial gas and natural gas should both be excepted from this Commission's jurisdiction. Pipelines were expanding and transporting natural gas greater distances in interstate commerce but it was not certain how much artificial gas moved in interstate commerce. Nevertheless, to make clear that both types of gas were excluded, a proposal was offered to strike the word "natural" from the original draft of the bill which excepted "natural gas", leaving only the word "gas". Instead, the final compromise, to accomplish the same purpose, specified that both "natural or artificial gas" were excepted from our jurisdiction.[13]

This distinction between basic gas types by origin or source was also made in the legislative discussion preceding the Natural Gas Act, to the effect that it was confined to regulation of natural gas because manufactured gas could not be transported profitably in interstate commerce.[14] Furthermore, in *Henry* v. *F.P.C.*, 513 F. 2d 395, 399 (D.C. Cir., 1975), the court held that in the Natural Gas Act Congress made a distinction between natural and artificial gas which is based on its origin and not its physical characteristics of heat value or methane content.

A statute should be given its plain meaning, as the courts have often held. See, for example, *Henry* v. *F.P.C., supra.* The current section 10501(a)(1)(C) uses the unqualified word "gas," which represents no substantive change from the former act according to the recodification law. The plain meaning of the former act, as supported by the legislative history, is that the universe of gas types classified by origin or source was excluded.[15] It is therefore our tentative conclusion that we lack jurisdiction over the transportation of CO_2 by pipeline.

The opinion of a sister agency should be given weight, if possible, so that related statutes can be coordinated. *Erlenbaugh* v. *United States*, 409 U.S. 239, 243–44 (1972). However, in this case the FERC decision is not helpful to us because it did not construe or interpret the terms natural and artificial gas. Its decision was based on other grounds.

Section 554(e) of the Administrative Procedure Act, U.S.C. 554(e), authorizes an agency in its discretion to issue a declaratory order to terminate a controversy or remove uncertainty. While we do not believe that we have jurisdiction over the considered transportation, the issue is important enough to institute a proceeding and accept comments on the petition and our view on it. This action should not significantly affect the quality of the human environment or conservation of energy resources, but comments may also address this matter.

Authority: 49 U.S.C. 10501(a)(1)(C) and 10321; and 5 U.S.C. 554(e).

Decided: December 16, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40267 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29450 (Sub-No. 1), et al.]

Iowa Falls Western Holding Co.—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Co.; Debtor (William M. Gibbons, Trustee) Between Iowa Falls and Sibley, et al.

In the matter of Finance Docket No. 29450 (Sub-No. 1), Iowa Falls Western Holding Company—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Iowa Falls and Sibley, IA; Finance Docket No. 29451 (Sub-No. 1), Royal-Manson Shippers' Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Royal and Manson, IA; Finance Docket No. 29459 (Sub-No. 1), Gateway Railroad-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) Lines in Iowa; Finance Docket No. 29470 (Sub-No. 1), Mid-States Port Authority-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Denver, Co. and McFarland, KS; Finance Docket No. 29471 (Sub-No. 1), Little Rock and Western Railway

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[4] Pub. L. 59–337.

[5] Pub. L. 95–91.

[6] Pub. L. 95–473.

[7] As provided by section 3 of the recodification law.

[8] According to House Report 95–1395.

[9] FERC decision in docket No. CP 79–130, supra.

[10] It can also be manufactured from such as fertilizer, an example of which is a current intrastate pipeline movement of carbon dioxide in Texas from a fertilizer plant to an oil field. *Pipeline Digest*, October 6, 1980, page 19.

[11] *The Transportation Crisis* by Wilson (1933), Chapter VIII, pages 123, 124, and 129.

[12] *Function of Natural Gas in the Production of Oil*, by the U.S. Bureau of Mines (1929).

[13] 40 Congr. Rec. 6369, 6371, 6372, and 7006 (1906).

[14] 81 Congr. Rec. 9316 (1937).

[15] The transportation of gas by itself can be distinguished from a 1971 valuation report in *Black Lake Pipeline Company*, 342 I.C.C. 339–40, which clearly presented no jurisdictional issue and involved transportation of a mixture of ethane and oil, to facilitate movement through the pipeline.

Also, a motor-carrier application proceeding for a certificate to transport liquid methane, *Indianhead Truck Line, Inc., Ext-Methane*, 123 M.C.C. 1, 7 (1975), in which natural gas is defined as a mixture largely of ethane and methane, is not determinative of the issue here. There is no question that combustible gas usable for fuel is natural gas, but should noncombustible gas with its origin in nature also be classified as a natural gas?

Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between North Little Rock and Perry, AR; Finance Docket No. 29473 (Sub-No. 1), Southeast Iowa Shippers Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Fruitland and Burlington, IA; Finance Docket No. 29474, Regional Transportation Authority (Illinois)—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Chicago/Joliet Commuter Line; Finance Docket No. 29475 TECE Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Texas, Oklahoma, and Kansas; Finance Docket No. 29478, Shelton-Davis Transportation Co.—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma; Finance Docket No. 29479, Des Moines Metropolitan Transit Authority—purchase (portion)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee); Finance Docket No. 29480, Arkansas Transportation Commission and Oklahoma Department of Transportation purchase—portion (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma, Tennessee, Arkansas, and Louisiana; Finance Docket No. 29516, Atlantic and Pacific Railway Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Iowa, Nebraska, and Illinois; Finance Docket No. 29518, Chicago and North Western Transportation Company—Notice of Intent To file an application to purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Lines in Iowa; Finance Docket No. 29533, City of Sibley—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Sibley, IA; and Finance Docket No. 29537, Northern Properties Corporation—purchase and trackage rights and the Kansas City Northern Railway Company—operation—Chicago, Rock Island and Pacific Railroad Company (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) lines in Missouri, Minnesota, and Iowa.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of the decision served October 31, 1980 and published November 7, 1980 at 44 FR 74084; and vacation of the procedural timetable.

SUMMARY: These "applications" will be treated as "offers to purchase" portions of the Chicago, Rock Island and Pacific Railway Company, Debtor (William M. Gibbons, Trustee) (Rock Island) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (Milwaukee). All filings of "competing applications" will be treated as "notices of intent to file applications." The timetables set in prior decisions are vacated and these proceedings will be rescheduled for processing when purchase agreements as well as more detailed information about the proposals are submitted.

DATES: This decision will be effective on December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7026 or, Ellen D. Hanson, (202) 275–7245.

SUPPLEMENTAL INFORMATION: A procedural timetable for these proceedings and for all applications seeking to acquire any of the same lines (competing applications) was set in a decision served October 31, 1980. This timetable required all applications to be complete and all competing applications to be filed by December 2, 1980. We have received requests for extensions of time from the Metropolitan Transit Authority, Gateway Railroad Corporation, Little Rock and Western Railway Corporation, and Iowa Falls Western Holding Company (each a noncarrier applicant). We have received incomplete competing applications from Chicago and North Western Transportation Company (C&NW) (in Finance Docket No. 29518 (Sub-No. 1)); and Northern Property Corporation (NPC) and Kansas City Northern Railway (KCNR) (in Finance Docket No. 29537). We have also received notices of intent to file applications from Burlington Northern, Inc. (BN) and Kansas City Southern Railway Company (KCS). Finally, the City of Sibley, IA also filed an incomplete application to purchase 3 miles of track.

A brief history of these proceedings will be helpful to an understanding of our ruling here. Section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96–254 (1980) (RITEA) required that, to be eligible for loan guarantees from Federal Railroad Administration (FRA), *purchase applications* by noncarrier applicants had to be filed with us by September 15, 1980. In response to this deadline, noncarriers filed applications that were incomplete because they did not contain purchase agreements and generally lacked specific information about the terms of the purchase and proposed operations. This information was not available to the noncarrier applicants at the time the applications were filed.

Commission procedure requires that applications be complete when filed, except for informational requirements waived in advance. However, in view of the filing deadline set by RITEA, we exercised our administrative discretion and temporarily waived certain informational requirements and accepted the incomplete applications. When the temporary waiver expired, applicants requested and were granted further extensions (until December 2, 1980) in our October 31, 1980 decision.

The second deadline, December 2, has come and applicants have filed again for extensions. The noncarriers show that negotiations with the Trustee continue to be complicated and protracted. The Trustee is said to be completing the real estate valuation appraisal and serious negotiations are beginning.

In our October 31 order we also required competing applications to be filed by December 2, C&NW, NPC, KCNR, BN and KCS have requested that we modify that procedural timetable and allow them to file a notice of intent to file an application. They argue that a notice will provide the Commission with crucial information about competing interests for specific Rock Island lines. They contend that applications should not be required at this time because they will be incomplete until agreements are reached, and because the filing of an application starts the 100-day decisional deadline under Section III of RITEA. The railroads doubt that negotiations will be completed in time for the Commission to reach a decision within the 100-day period.

The noncarrier applications are not subject to the 100-day deadlines set by RITEA; however, there is a 180-day decision time limit imposed under Sections 5(b)(2) and 17(b)(2) of the Milwaukee Railroad Restructuring Act, Pub. L. 96–101, 93 Stat. 736 (1979) (MRRA). Under MRRA a recommendation to the Court in these proceedings must be made by March 12. Since serious negotiations have only just begun, it is unlikely that agreements can be filed and hearings conducted on applications within the time limit.

A reasonable response to these circumstances is for us to postpone

these proceedings until agreements have been reached and specific relevant information is available. A recent amendment to RITEA makes this approach the proper one. Section 701 of the Staggers Rail Act of 1980, Pub. L. 96–448, modified section 112 of RITEA so that "purchase offers" could be filed with the Commission prior to September 15, 1980 in lieu of the prior requirement of "purchase applications."

Clearly these incomplete filings more closely resemble purchase offers than purchase applications. They essentially consist of proposals to the Rock Island and Milwaukee Trustees which must be accepted or negotiated in order to become binding contracts. As we have defined applications, except in the instance of applications competing with one previously filed contained an agreement, an agreement is required. See 49 CFR 111.2(a)(9) and 1111.21(a)(3)(ii). Accordingly, we will treat the noncarrier applications as purchase offers rather than applications. When the pertinent information is supplied, the puchase offers will be handled as applications and will be processed expeditiously. Applications filed after September 15 will be treated as notices of intent to file applications. All information which has been filed can be incorporated by reference into the future application. The filing fee will be held until the application is filed, and all docket numbers will remain the same.

The changes we have made constitute an attempt to comply with the Congressional policy, enunciated in RITEA and MRRA, to preserve rail service. When Congress required applications to be filed by the September 15, 1980 deadline, we modified our procedural rules so that noncarriers would be able to qualify for FRA loans. We extended the deadline in October, rather than holding the proceedings in abeyance, in hopes that a strict timetable would encourage the parties to hasten negotiations and thus speed up the transfer of these lines. However, we cannot act when the relevant information is not available. Under these circumstances, our analysis would be meaningless. Accordingly, in view of the amendment contained in section 707 of the Staggers Act, it is now appropriate to treat these filings as offers to purchase.

This approach also preserves the noncarriers' applications for FRA assistance. If we were to dismiss the applications as incomplete the noncarriers would have to apply individually to the Secretary of Transportation for an extension of the deadline for filing purchase offers or applications.

It is ordered: The procedural timetables which have been set in these proceedings are vacated. The submissions previously made by noncarrier applicants will be treated as offers and will be processed expeditiously as they are completed. The information provided by the railroads and by the City of Sibley will be treated as notices of intent to file applications and can be incorporated into further applications.

Dated: December 17, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum concerning with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum, Concurring:

Our previous decisions appear to have been unable to expedite the negotiations. I hope that today's decision, despite the delays it imposes, wioll ultimately contribute to a speedier resolution of the Rock Island and Milwaukee Road situations.

[FR Doc. 80–40270 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 19, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the ICC on or before January 8, 1981.

No. 43883, Trans-Continental Freight Bureau, Agent, (No. 557), rates on freight and/or passenger motor vehicles, set up on bi-level or tri-level cars, from Wayne and Wixom, MI, and Fairlane, OH to Portland, OR and Seattle and Spokane, WA. Rates proposed to be effective in its Tariff ICC TCFB 3001–B. Grounds for relief-carrier competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40272 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 400]

Modification of Procedure for Handling Exemptions Filed Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of New Procedure.

SUMMARY: The Commission is modifying its procedure for dealing with petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980, Pub. L. 96–448. Except in the small number of cases where a potential for significant impact exists or where the impact is not readily ascertainable from the petition, the Commission will eliminate the current notice and comment procedure and issue a final decision based solely on the petition. Any exemption granted would become effective 30 days from the date of the decision's publication in the **Federal Register**, except in unusual circumstances. Appeal procedures are discussed.

EFFECTIVE DATE: December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Commission is modifying the procedure currently used for handling petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980).

Under the former section 10505, the Commission could grant an exemption only after providing an opportunity for a proceeding. (See former 49 U.S.C. 10505(d).) This requirement has been satisfied by providing a **Federal Register** notice and allowing comments to be filed.

The Staggers Act amended section 10505 by eliminating the requirements for a proceeding in all cases. (See section 213 of the Staggers Act *supra.)* The legislative history indicates that Congress, in eliminating this requirement, intended to give the Commission greater flexibility in the rail exemption area. Congress intends for the Commission to actively pursue exemptions under this section and has given us broad discretion to effectuate this mandate. See H.R. Rep. No. 96–1430, 96th Cong., 2d Sess. 104–105 (1980) and 49 U.S.C. 10101a(2).

Under current procedure, notice of the proposed exemption is published in the **Federal Register** providing for a 30-day comment period. At the end of the 30-day period, the Commission issues a decision which becomes effective on its date of publication. This procedure has required approximately 4 months to complete and in the vast majority of cases caused unnecessary delay.

The majority of exemption petitions have involved only minor transactions which are likely to have little, if any, impact on competitors, shippers or employees. Although comments have been filed in 22 of the 37 exemption petitions filed since January 1980, not once has an exemption been denied.